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4 IN THE UNITED STATES DISTRICT COURT

5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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7 KATHY CROSBY, et al.,

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Plaintiffs,

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v.

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COUNTY OF ALAMEDA, et al.,

11

Defendants.

Case No. [20-cv-08529-MMC](#)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
COUNTY OF ALAMEDA'S MOTION
TO DISMISS**

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Before the Court is defendant County of Alameda's ("the County") Motion, filed April 9, 2021, "to Dismiss Plaintiffs' First Amended Complaint," pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.¹ Plaintiffs have filed opposition, to which the County has replied. Having read and considered the papers submitted in support of and in opposition to the motion, the Court rules as follows.²

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BACKGROUND

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¹ The remaining named defendant, Wellpath, Inc. ("Wellpath"), has not joined the instant motion.

² By order filed May 10, 2021, the Court took the matter under submission.

1 staff from Wellpath, a company that “provides medical services for inmates at Santa Rita
2 Jail.” (See id. ¶ 15.) According to plaintiffs, County staff and Wellpath staff “failed to
3 properly monitor [Christopher] Crosby” and “failed to prevent [him] from possessing a
4 plastic bag,” which, plaintiffs allege, he “placed . . . over his head” and “then suffocated
5 and died.” (See id.)

6 Based on the above allegations, plaintiffs assert claims against Wellpath and two
7 sets of Doe defendants, specifically, Does 1-25, who, plaintiffs allege, were at all relevant
8 times employees of the County, and Does 26-50, who, plaintiffs allege, were at all
9 relevant times employees of Wellpath. (See FAC ¶¶ 10-11.) In particular, plaintiffs
10 assert, as against Wellpath and all Doe defendants, two federal Causes of Action, titled,
11 respectively, “Fourteenth Amendment, 42 U.S.C. § 1983[;] Violation of Christopher
12 Crosby’s Substantive Due Process Rights” and “Fourteenth Amendment, 42 U.S.C.
13 § 1983[;] Violation of P[plaintiffs’] Right to a Familial Relationship”; additionally, as against
14 Wellpath and Does 26-50, plaintiffs assert one state law Cause of Action, titled “Wrongful
15 Death– Negligence.”³

DISCUSSION

17 By order filed February 3, 2021, the Court approved the parties’ stipulation to
18 dismiss with prejudice plaintiffs’ state law Causes of Action to the extent brought against
19 the County in plaintiffs’ initial complaint (see Order, filed Feb. 3, 2021, at 3:3-8), and by
20 order filed February 26, 2021, dismissed with leave to amend plaintiffs’ federal claims as
21 asserted therein against the County, finding such claims were subject to dismissal “for
22 failure to allege sufficient facts to support a finding of municipal liability under § 1983.”
23 (See Order, filed Feb. 26, 2021, at 2:10-15 (citing Monell v. Dep’t of Soc. Servs., 436
24 U.S. 658, 691 (1978)).) On March 26, 2021, plaintiffs filed the FAC.

25 By the instant motion, the County first contends plaintiffs’ claims, to the extent

27 ³ By order filed May 5, 2021, the Court approved the parties’ stipulation to dismiss
28 with prejudice plaintiffs’ state law Cause of Action titled “Violation of California
Government Code § 845.6.” (See Order, filed May 5, 2021.)

1 alleged against the County, are again subject to dismissal for failure to state a claim. As
2 the County acknowledges, however, none of the Causes of Action alleged in the FAC are
3 asserted against the County, an absence that does not appear to have been an
4 oversight. (See Opp. at 5:10-12 (stating “[p]laintiffs will seek leave to amend to add
5 causes of action against the County of Alameda once the parties participate in
6 discovery”)).

7 In any event, even assuming plaintiffs did intend to include the County in their
8 federal Causes of Action, such claims, as the County points out, are again subject to
9 dismissal for failure to allege sufficient facts to support a finding of municipal liability
10 under § 1983, as plaintiffs have failed to allege facts showing any alleged deprivation of
11 constitutional rights occurred as a result of a municipal policy. See Monell, 436 U.S. at
12 691 (holding municipality may not be held liable under § 1983 unless alleged wrongful act
13 was committed “pursuant to an official municipal policy”).⁴

14 Consequently, plaintiffs’ claims, to the extent asserted against the County, will be
15 dismissed,⁵ and, given plaintiffs’ failure to cure the previously identified deficiencies in the
16 initial complaint, such dismissal will be without further leave to amend. If, however,
17 during the course of discovery, plaintiffs learn of facts supporting a cognizable claim for
18 relief against the County, they may seek reconsideration of such dismissal. See Civil
19 L.R. 7-9(b) (setting forth grounds upon which motion for reconsideration may be heard).

20 Next, the County, in its Reply, argues plaintiffs’ federal Causes of Action, to the
21 extent asserted against Does 1-25, are also subject to dismissal, on the ground that the

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23 ⁴ To the extent plaintiffs argue a report released by the United States Department
24 of Justice Civil Rights Division on April 22, 2021 supports a finding of municipal liability
25 under § 1983 (see Opp. at 4:27-5:7), such argument is unavailing, as the report cannot
be considered in connection with the instant motion. See Schneider v. Cal. Dep’t of
Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (holding, “in determining the propriety of a
Rule 12(b)(6) dismissal, a court may not look beyond the complaint” (emphasis omitted)).

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27 ⁵ In light of this finding, the Court does not address the County’s additional
28 argument that “[p]laintiffs’ allegations do not meet the ‘deliberate indifference’ standard
for their First [C]ause of [A]ction, or ‘shocks the conscience’ standard[] for their Second
[C]ause of [A]ction.” (See Mot. at 11:19-21.)

1 FAC lacks facts sufficient to support either claim against them. As the County, in its
2 Motion, only sought dismissal of “[p]laintiffs’ claims against the County” (see Mot. at 13:6-
3 8), and did not seek dismissal of any Doe defendants until its Reply (see Reply at 2:17-
4 19, 8:4-9:18), the Court has not considered such argument herein.⁶ See, e.g., Lentini v.
5 Cal. Ctr. for the Arts, Escondido, 370 F.3d 837, 843 n.6 (9th Cir. 2004) (refusing to
6 consider argument raised for the first time in reply; noting opposing party had no
7 opportunity to respond).

8 **CONCLUSION**

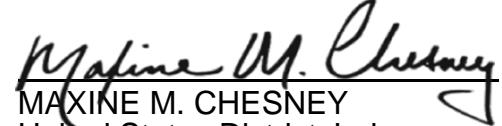
9 For the reasons stated above, the County’s Motion to Dismiss is hereby
10 GRANTED in part and DENIED in part, as follows:

11 1. To the extent the County seeks dismissal of plaintiffs’ claims as alleged
12 against the County, the motion is GRANTED, and such claims are hereby DISMISSED
13 without further leave to amend.

14 2. To the extent the County seeks dismissal of plaintiffs’ claims against Does
15 1-25, the motion is DENIED without prejudice to its filing, if appropriate, a motion on their
16 behalf.

17 **IT IS SO ORDERED.**

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19 Dated: May 18, 2021


20 MAXINE M. CHESNEY
21 United States District Judge

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24 ⁶ To the extent the County, in its Motion, raised a challenge to the sufficiency of
25 plaintiffs’ factual allegations other than those pertaining to a municipal policy, it did so
26 solely as a secondary argument on behalf of the County, and, indeed, there is some
27 question as to whether counsel for the County has any authority to represent the Doe
28 defendants or include them in their Rule 12(b)(6) motion. See Perez v. City of Hastings,
Neb., No. 4:16CV3158, 2017 WL 1066574, at *4 (D. Neb. Mar. 21, 2017) (questioning
“whether the named City and County defendants and their counsel ha[d] authority to
respond for the as yet unidentified Doe defendants in their individual capacities and seek
dismissal on their behalf”).